

U.S. Department of the Interior, Fish and Wildlife Service

Record of Decision

Proposed Issuance of an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit to the Nebraska Public Power District (NPPD) regarding Implementation of the Revised Habitat Conservation Plan for Impacts to the Threatened American Burying Beetle Resulting from the R-Project Transmission Line in Nebraska.

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The final Record of Decision and all associated supporting documents, including the Final Supplemental Environmental Impact Statement, Final Environmental Impact Statement, Endangered Species Act Section 7 Biological Opinion, and Findings and Recommendations on Issuance of an Incidental Take Permit will be available on the U.S. Fish and Wildlife Service's Nebraska Field Office website (<https://www.fws.gov/office/nebraska-ecological-services>).

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Introduction

The U.S. Fish and Wildlife Service (Service) prepared this Record of Decision (ROD) to document the decision of the Service in response to an application submitted by the Nebraska Public Power District (NPPD) for an Incidental Take Permit (Permit or ITP) under Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 USC 1533(c)(1)).

This ROD was prepared in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 United States Code [USC] 4321 et seq.), as amended, and the Department of the Interior's NEPA regulations (43 Code of Federal Regulations [CFR] 46). The Service originally issued an ITP (#TE72710C-0) to NPPD on June 12, 2019, authorizing incidental take of the American burying beetle (*Nicrophorus americanus*; ABB) that would result from the R-Project, a 345 kilovolt (kV), 226-mile-long transmission line in Nebraska. The *Federal Register* (FR) notice of availability for this previous ITP and associated Habitat Conservation Plan and Final Environmental Impact Statement (EIS) was dated December 5, 2018, and published on February 8, 2019 (84 FR 2900).

In July 2019, a group of R-Project opponents filed a lawsuit challenging the Service's decision under the ESA, NEPA, and National Historic Preservation Act (NHPA). On June 17, 2020, the U.S. District Court for the District of Colorado (court) issued a decision. While the court found in favor of the Service on several counts, it identified certain discrete errors in the Service's decision-making process. In its ruling, the court vacated and remanded the ITP to the Service for further proceedings consistent with the court's order (*Oregon-California Trails Association v. Walsh*, 1:19-cv-01945-WJM, D. Colo 2020).

Following the court vacating and remanding the ITP, NPPD prepared the R-Project Transmission Line Revised Habitat Conservation Plan (Revised HCP) and submitted the updated ITP application. In accordance with the 2020 court remand and in compliance with NEPA, the Service prepared a Supplemental EIS (SEIS) that analyzed and disclosed potential impacts that could result from issuance of the ITP for the R-Project. Our decision is based on the ITP application, the supporting revised HCP, the SEIS addressing this action, and other information in the decision file. Executive Order (EO) 14154, Unleashing American Energy (Jan. 20, 2025), and a Presidential Memorandum, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025), repeal EO 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (Feb. 11, 1994) and EO 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All (Apr. 21, 2023). While environmental justice was considered in the 2018 Final EIS, it is not required, or necessary to make a reasoned decision under ESA section 10, and in light of the EO and Presidential Memorandum, was not considered further by the Service in this decision.¹

EO 14154 and EO 14148, Initial Rescissions of Harmful Executive Orders and Actions (Jan.

¹ Executive Order 14154, Unleashing American Energy (Jan. 20, 2025), and a Presidential Memorandum, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (Jan. 21, 2025), require the Department to strictly adhere to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. Further, such Order and Memorandum repeal Executive Orders 12898 (Feb. 11, 1994) and 14096 (Apr. 21, 2023). Because Executive Orders 12898 and 14096 have been repealed, complying with such Orders is a legal impossibility. The Service verifies that it has complied with the requirements of NEPA, including the Department's regulations and procedures implementing NEPA at 43 C.F.R. Part 46 and Part 516 of the Departmental Manual, consistent with the President's January 2025 Order and Memorandum.

20, 2025) repeal EO 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis (January 20, 2021) and related guidance and estimates based on the disbanded Interagency Working Group on Social Cost of Greenhouse Gases. While the social cost of greenhouse gases was considered in the FEIS, those estimates were not required or necessary to make a reasoned decision under ESA section 10, and in light of the EOs, were not considered further by the Service in this decision.

EO 14154 also rescinded EO 11991, Relating to Protection and Enhancement of Environmental Quality. The Council on Environmental Quality (CEQ) issued a final rule on January 8, 2026, that removed its NEPA implementing regulations (91 FR 618). This final rule followed an interim final rule issued on February 25, 2025 (90 FR 10610), which stated that agencies may continue to follow similar procedures, such as those in agency implementing regulations. The Service conducted its NEPA review of the proposed action consistent with NEPA, as amended, and the Department of the Interior's current NEPA regulations. The Service also voluntarily considered the CEQ's rescinded regulations implementing NEPA, previously found at 40 C.F.R. Parts 1500-1508, as guidance to the extent appropriate and consistent with the requirements of NEPA and EO 14154.

The SEIS incorporates by reference, where applicable, FEIS information per NEPA 42 USC Sec 4321 et seq.

This ROD presents the Service's decision and the rationale supporting the decision, identifies the reasonable range of alternatives considered in the SEIS and the environmentally preferable alternative, and discusses whether all practicable means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted. The Service also reviewed input from Tribes; federal, state, and local agencies; and public comments. All applicable laws, regulations, executive orders, and local government plans were considered in evaluation of alternatives. Further, the Service determined, and our Biological Opinion demonstrates, that the issuance of the ITP is not likely to jeopardize listed species or adversely modify or destroy critical habitat. This ROD completes the NEPA process.

Purpose and Need

The purpose of the federal action of issuance of an ITP is to fulfill the Service's authority under ESA Section 10(a)(1)(B) by responding to NPPD's application requesting authorization of incidental take of ABB.

The need for the federal action is to respond to NPPD's application for an ITP under ESA Section 10(a)(1)(B) to determine if it meets issuance criteria. The Service also needs to ensure that the ITP and implementation of the Revised HCP complies with other applicable federal laws, regulations, treaties, and EOs, as appropriate.

Proposed Federal Action

The Service proposes to issue an ITP for ABB to NPPD, under the authority of Section 10 of the ESA and the implementing regulations (50 CFR 17.32(b)), for a period of 50 years. Documents used in the preparation of this ROD include the following, which are incorporated by reference:

1. 2018 Final Environmental Impact Statement on Issuance of an Incidental Take

Permit and Implementation of a Habitat Conservation Plan for the R-Project Transmission Line (USFWS 2018).

2. Final R-Project Revised Habitat Conservation Plan (NPPD 2025).
3. Final Supplemental Environmental Impact Statement for the Nebraska Public Power District Revised R-Project Habitat Conservation Plan (ICF 2026).
4. Biological Opinion for the Proposed Issuance of a Section 10(a)(1)(B) Incidental Take Permit to the Nebraska Public Power District for the R-Project Revised Habitat Conservation Plan (USFWS 2026a).
5. Findings and Recommendations on Issuance of an Incidental Take Permit to Nebraska Public Power District for their R-Project Revised Habitat Conservation Plan. (USFWS 2026b).

Alternatives Considered

The Final SEIS considers four alternatives: the no action alternative, proposed action (Tubular Steel Monopole and Steel Lattice Tower Structures), Alternative A (2019 FEIS Proposed Action), and Alternative B (Tubular Steel Monopole Construction Only). The proposed action, which is the Service's preferred alternative, is the current R-Project and Revised HCP. Final SEIS Section 2.7, *Alternatives Eliminated from Detailed Study*, describes alternatives considered but dismissed from detailed study in the SEIS.

No Action Alternative

Under the No Action Alternative, the Service would not issue an ITP for the R-Project, NPPD would not implement the Revised HCP, and the R-Project would not be constructed.

Proposed Action: Tubular Steel Monopole and Steel Lattice Tower Structures (Current R-Project and Revised HCP; Preferred Alternative)

The proposed action, which is the Service's preferred alternative, includes the current R-Project and Revised HCP.

The ITP is conditioned on implementation of NPPD's Revised HCP, developed by NPPD with technical input from the Service. NPPD is requesting an ITP with a 50-year permit term to provide take coverage throughout the estimated life of the R-Project.

The proposed action is similar to the FEIS proposed action and, as such, is largely incorporated by reference in the SEIS.

SEIS Section 2.4, *Proposed Action: Tubular Steel Monopole and Steel Lattice Tower Structures (Current R-Project and Revised HCP; Preferred Alternative)*, summarizes changes between the 2018 proposed action and the current proposed action. Of note, the updated proposed action incorporates a route adjustment intended to reduce impacts on the Oregon-California National Historic Trail ruts. The proposed action also incorporates changes made in the Revised HCP, including updated covered activities and additional avoidance and minimization measures.

Covered Activities

NPPD seeks take authorization for the covered activities, described in Revised HCP Section 2.8, *Covered Activities*. Broadly, the covered activities include the establishment of temporary and permanent access roads and work areas, right-of-way clearing, the construction of transmission line structures, distribution power line and well relocation, emergency repairs, and a construction contingency. These are the activities determined by NPPD to be likely to result in incidental take of ABB.

Covered Species

The Revised HCP covers ABB, which is federally listed as a threatened species.

Evaluated Species

Revised HCP Chapter 4, *Potential Effects to Evaluated Species*, describes potential effects to 11 evaluated species, which are species that occur in the Revised HCP Study Area and may have the potential to be affected by construction, operation, and maintenance of the R-Project. Avoidance and minimization measures are described for each species and are intended to reduce the level of effects on the evaluated species to below a level that would result in incidental take.

Conservation Strategy

Revised HCP Chapter 6, *Conservation Plan*, describes the conservation strategy and includes overarching Biological Goals and Objectives for ABB. The biological goals describe guiding principles for the operating conservation program and the biological objectives provide measurable targets for achieving the biological goals. Revised HCP Chapter 6 also describes the avoidance, minimization, and mitigation measures that would be applied to achieve the Biological Goals and Objectives.

Avoidance and minimization measures include avoidance of wet meadows and mesic grasslands where feasible, use of existing access routes, use of temporary improvements for access and overland access where feasible, siting temporary work areas in areas unsuitable for ABB use, use of helical pier foundations in the Sandhills, use of helicopter construction, winter construction where feasible, limited nighttime construction during ABB active periods, use of down shielded and low-temperature LED lighting, application of herbicides during daytime (when ABB are underground), and restoration of disturbed habitat after construction.

Mitigation measures include the establishment of a 594-acre parcel of ABB habitat to be protected in perpetuity to support the ABB Sandhills population.

Monitoring, Reporting, and Adaptive Management

Revised HCP Chapter 6 explains the required compliance and effectiveness monitoring that would be conducted throughout the permit term (Section 6.3, *Monitoring*), provides performance and success criteria for each Biological Goal and Objective (Section 6.4, *Performance and Success Criteria*), and provides adaptive management requirements based on monitoring results (Section 6.5, *Adaptive Management*). Revised HCP Section 6.6, *Reporting*, explains NPPD's annual reporting requirements.

Changed and Unforeseen Circumstances

Revised HCP Sections 7.2, *Changed Circumstances*, and 7.3, *Unforeseen Circumstances*,

provide the Applicant's responses to potential changed circumstances and unforeseen circumstances within the plan area.

Alternative A: 2018 Final EIS R-Project and HCP

Alternative A is the FEIS proposed R-Project and HCP, as described in FEIS Section 2.4, *Alternative A: Tubular Steel Monopole and Steel Lattice Tower Structures*.

Alternative B: Tubular Steel Monopole Construction Only

Under Alternative B, the Service would issue an ITP for NPPD's current R-Project, and NPPD would implement the Revised HCP. Alternative B would use only tubular steel monopoles for all proposed transmission line towers, but otherwise, the R-Project would be the same as the proposed action, as described in SEIS Section 2.4, *Proposed Action: Tubular*.

Public Involvement

Public participation opportunities that occurred prior to the SEIS are detailed in FEIS Section 1.8, *Public and Agency Involvement*. Additional opportunities for the public to provide input were provided throughout the SEIS process.

Scoping

The formal scoping process for the SEIS began on November 18, 2022, with the publication of the NOI in the FR informing the public of the Service's intent to prepare an SEIS to further consider the effects of the ITP issued to NPPD for the R-Project, under Section 10(a)(1)(B) of the ESA (87 FR 69294). The NOI initiated a 30-day comment period, until December 26, 2022, for public review and comment on the SEIS and announced two virtual public meetings on December 8, 2022. The meetings provided information on the proposed action and answered questions regarding the proposed action and overall NEPA process. Details on the scoping process can be found in SEIS Appendix B, *Scoping*. Copies of all scoping comments are available at: <https://www.regulations.gov/document/FWS-R6-ES-2014-0048-0202/comment>.

Draft SEIS

The Service published a Notice of Availability of the Draft SEIS and Revised HCP in the FR on February 9, 2024 (87 FR 15383). The notice requested public comments on the Draft SEIS and Revised HCP and announced three public meetings: two in-person and one virtual. The original public comment period was from February 9, 2024, to April 9, 2024. The Service extended the public comment period to May 9, 2024, in response to commenter requests (87 FR 77877).

The Service held two in-person meetings: one on February 27, 2024, at the Prairie Arts Center in North Platte, Nebraska, and another on February 29, 2024, at Mid Plains Community College in Broken Bow, Nebraska. The Service also held a virtual public meeting on March 7, 2024. These meetings provided attendees the opportunity to ask questions of the Service and provide verbal comments on the Draft SEIS and Revised HCP. Verbal comments were transcribed and entered into the record as formal public comments. Comments were also accepted electronically via www.regulations.gov and via mail. Copies of all public comments are available at: <https://www.regulations.gov/document/FWS-R6-ES-2014-0048-0268/comment>.

The Draft SEIS, Revised HCP, public meeting presentation, and a recording of the virtual public meeting are available online at <https://www.fws.gov/project/r-project-transmission-line>.

Final SEIS

The Final SEIS was prepared to address substantive comments received on the Draft SEIS and Revised HCP, reflect updated data and changes to the HCP, provide clarification, and correct inadvertent errors. Final SEIS Appendix C, *Responses to Comments*, describes the public review process in more detail and provides responses to the substantive comments received, including noting where appropriate clarifications were made to the Final SEIS. Final SEIS Section 1.8.3, *Changes Between the Draft and Final SEIS*, summarizes changes made between the Draft and Final SEIS.

The Final SEIS was announced in the FR on January 30, 2026 (91 FR 4080).

Other Coordination and Consultation

Cooperating Agencies

Federal regulations require the Service to invite eligible federal agencies, state and local governments, and federally recognized American Indian Tribes to participate as cooperating agencies during the preparation of the SEIS. The following entities accepted invitations to participate as cooperating agencies in this process:

- National Park Service–National Trails
- U.S. Environmental Protection Agency
- U.S. Army Corps of Engineers
- Nebraska Game and Parks Commission
- History Nebraska

The Service provided cooperating agencies with the opportunity to review and provide comments on the Draft SEIS prior to publication.

Government-to-Government Consultation with Native American Tribal Nations

In accordance with Executive Order 13175 and Department of the Interior Secretarial Order 3206, the Service formally invited 31 Tribal Nations to consult on a government-to-government basis with mailed letters in August and November 2022. The Rosebud Sioux Tribe formally requested government-to-government consultation with the Service on February 16, 2023, and the Service continues to coordinate with all interested Tribal Nations on government-to-government consultation. In July 2023, the Service initiated NHPA Section 106 consultation process (herein referred to as Section 106 consultation) and sent letters to 31 Tribal Nations, which also included another invitation to participate in government-to-government consultation. Two additional Tribal Nations were invited to consult on a government-to-government basis in 2023, and one additional Tribal Nation was invited to consult on a government-to-government basis in 2025. See Final SEIS Section 3.10, *Cultural Resources*, and Appendix H and its attachments for additional details about government-to-government consultation and Section 106 consultation.

All invited Tribal Nations were specifically made aware of the opportunity to comment on the

Draft SEIS through the public comment period. Additionally, comments received from Tribal Nations throughout the Section 106 process and government-to-government consultation were incorporated into the SEIS as feasible.

National Historic Preservation Act

Under Section 106 of the NHPA, federal agencies must consider the effects of their undertakings that have the potential to impact historic properties including any district, site, building, structure, or object that is listed on or eligible for listing on the National Register of Historic Places and provide the State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), affected Tribal Nations, and other Consulting Parties an opportunity to comment.

The Service conducted Section 106 consultation during development of the 2018 Final EIS. A Programmatic Agreement (PA) under NHPA was executed in 2019 in association with the 2019 incidental take permit but implementation of this PA stopped after the 2020 court decision. In July 2023, the Service reinitiated consultation under Section 106 with the Nebraska SHPO, NPPD, ACHP, 31 federally recognized Tribal Nations, 5 religious/cultural organizations, and 3 private landowners. Subsequently, 3 additional Tribal Nations, 3 additional federal agencies, 9 local government agencies, and 1 additional landowner were invited to consult under Section 106.

On August 22, 2025, NPPD submitted a request to the Service to use Alternative Procedures for Compliance with Section 106 of the NHPA during the National Energy Emergency for the R-Project transmission line. On January 13, 2026, the Department of the Interior approved NPPD's use of alternative procedures for compliance with Section 106 of the NHPA for the R-Project in response to the national energy emergency. Per 36 CFR § 800.12(b)(2), the Service provided ACHP, the Nebraska State Historic Preservation Office, and Tribal Nations the opportunity to comment on the proposed emergency undertaking within seven days of notification. Based on the comments received, and additional responses/commitments from NPPD, the FWS has determined that NPPD will be required to implement the measures described in "*The U.S. Fish and Wildlife Service Requirements under National Historic Preservation Act for the Endangered Species Take Permit PER7357373*," which is appended as a term and condition to the ITP.

Endangered Species Act Section 7 Consultation

Section 7(a)(2) of the ESA requires that federal agencies ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. If an action agency determines a proposed action may affect listed species or designated critical habitat, consultation between that agency and the Service is required under Section 7 of the ESA. The Service completed an intra-agency Section 7 consultation regarding the potential effects of issuing an ITP to NPPD and found that the action was not likely to jeopardize the continued existence of ABB or any other federally listed species.

Decision and Rationale

The Service's decision is to issue the ITP for incidental take of ABB from the covered activities described in the Revised HCP. The determination to issue the ITP is based on the Final SEIS, Final Biological Opinion, ESA Section 10 Findings and Recommendations, and

other information in the administrative record.

Issuance of the ITP authorizes incidental take of ABB, subject to the ITP's incidental take limits and other terms and conditions and other requirements of the HCP. Measures to avoid, minimize, and mitigate the impact of the potential taking of covered species to the maximum extent practicable are incorporated into the proposed action, as required under Section 10 of the ESA, and these measures are a condition of ITP issuance.

The term of the ITP is 50 years from the date of permit issuance. Assurances would be provided to NPPD in the case of changed and unforeseen circumstances (50 CFR 17.22 and 17.32).

Through the NEPA analysis, the ESA Section 7 Biological Opinion, and the ESA Section 10 findings and recommendations, the Service determines, and summarizes below, that the proposed action would meet the statutory criteria for issuance of an ITP under Section 10(a)(2)(B) of the ESA:

- 1) The taking will be incidental;
- 2) NPPD will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- 3) NPPD will ensure that adequate funding for the HCP will be provided;
- 4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- 5) No other measures are necessary or appropriate for purposes of the HCP.

Implementation of the Revised HCP and issuance of the ITP best fulfills the Service's statutory mission and responsibilities while meeting the agency purpose and need to conserve listed species.

DECISION ON PERMIT ISSUANCE

I certify that the Service considered all the alternatives, information, and analyses, and objections submitted by state, Tribal, and local governments, and other public commenters for consideration by the joint lead and cooperating agencies in developing the Final SEIS.

Based on the foregoing ROD and the Findings for the HCP, I recommend issuance of the ITP to NPPD for incidental take of ABB in accordance with the R-Project Revised HCP.

Matt Hogan
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